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IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH,
IN AND FOR UTAH COUNTY.

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Provo Reservoir Company, a corporation,	}	
Plaintiff.		ANSWER
-vs-		CROSS COMPLAINT
Provo City et al.		AND COUNTER CLAIM
Defendants.	}	
.....:0		

Comes now Timpanogos Canal Company
a corporation, one of the defendants in the above entitled
action, and by leave of Court and consent of counsel for
the plaintiff first had and obtained, makes the following
answer to the plaintiff's complaint, to-wit:

FIRST.-- This defendant admits the allegations con-
tained in the paragraphs of the plaintiff's complaint
numbered one to twenty-six, both inclusive, and also
admits the allegations contained in paragraphs 28 and
29 (d) of said complaint.

SECOND.-- Not having any knowledge or information
sufficient to form a belief in respect thereto, this
defendant on that ground, denies all the allegations
contained in the paragraphs of said complaint numbered 27,
29, 29 (a), 29(b), 30, 31, 32, and 33.

THIRD.-- Answering paragraph of said complaint numbered
29(c), this defendant denies that it has, at any time
consented to the change of the place of diversion of the
water described in paragraph 29(b) of said complaint, and
denies that none of the defendants will be injured or
damaged by the ^{transfer} ~~interference~~ of the water, as alleged in
said paragraph.

FOURTH.-- Denies each and every allegation contained
(1)

in the paragraph numbered 29(e) of said complaint.

FIFTH.-- Denies that this defendant has, at any time, diverted from said river, or converted to its own use, *any water* the right to the use of which belonged to, or was or is the property of the plaintiff, and denies that this defendant threatens to violate any rights of the plaintiff and denies that any acts of this defendant have or will work any injury to the plaintiff or its stockholders or lessees or destroy their crops or do them any damage whatever, and denies that any act or acts of this defendant, threatened or otherwise, have deprived or will deprive, the plaintiff or its stockholders or lessees of any right or interest they may have to the use of the water of said Provo River.

SIXTH.-- Answering paragraph of said complaint numbered 36, this defendant denies that it has ~~been~~, at any time, used any water diverted by it, wastefully, or in any quantities in excess of that necessary and beneficial for the irrigation of the lands of this defendant's stockholders, and denies that any use of the waters of said Provo River, by this defendant, has deprived or is depriving the plaintiff, or any party to this suit, of any lawful right to the use of the waters of said river, and denies that any use of said water, by this defendant, was or is a violation of the rights of the plaintiff, or its stockholders or lessees, or has prevented the development of the country or been in violation of the public policy of this state.

SEVENTH.-- Answering paragraph numbered 37 of said complaint, this defendant admits the rendition and entry of the two decrees mentioned in said paragraph, and denies generally each and every other allegation contained in said 37th paragraph, not herein specifically admitted.

EIGHTH.-- Answering the 39th paragraph of said complaint, this defendant denies generally each and every allegation contained therein.

COUNTER CLAIM AND CROSS COMPLAINT

Further answering the plaintiff's complaint and as a defense thereto, and by way of counter-claim against the plaintiff and cross complaint against each and all of the other defendants, this defendant alleges:

FIRST.-- Each and every allegation contained in the paragraphs numbered one to twenty-six, both inclusive, of the plaintiff's complaint is adopted and alleged as a part of this counter-claim and cross complaint in like manner as though the same were set forth in full herein.

SECOND.-- That more than thirty years ago, the grantors and predecessors in interest of this defendant, were the owners in severalty of about 1000 acres of land lying along and below the canal of this defendant as now constructed in Utah County, Utah, which lands then were and still are of a gravelly and porous character and without irrigation, said lands were and are unproductive, but when properly and sufficiently irrigated said lands have and do now produce abundant and valuable agricultural and horticultural crops and the said lands, by reason of their location near the city of Provo, and by reason of the water right appurtenant thereto, and hereinafter particularly described are of great value.

THIRD.-- That more than thirty years ago, the grantors and predecessors in interest of this defendant for the purpose of acquiring a right to the use of the waters of Provo River for the irrigation of said lands and for culinary, domestic and other purposes, by means of dams and other diverting works, placed in the natural channel of said Provo River, near the mouth of Provo Canyon, in Utah County, Utah, and by means of

canals and ditches leading therefrom to the lands hereinabove mentioned, diverted and appropriated of the then unappropriated water of said river and applied to useful and beneficial purposes upon the lands above mentioned, the quantity of water hereinafter set forth and ever since the date of the first appropriation of said water, this defendant and its grantors and predecessors in interest have continued during each and every year ^(except when wrong fully interfered with) to divert and appropriate from the waters of said river and apply in irrigation of said lands and for culinary and domestic and other useful and beneficial purposes, the quantity of water hereinafter mentioned which quantity has been, during all of said time, and still is necessary and beneficial for said purposes, and the use thereof has been and now is economical and without waste and absolutely requisite to maintain the high state of cultivation to which said lands have been developed and to maintain and supply the homes and industries served with water from this defendant's canal.

FOURTH.-- That more than thirty years ago and long prior to the acquisition by the plaintiff or any of its grantors or predecessors in interest of any interest or right in or to the waters of said Provo River, this defendant's canal had been completed and at the date of said completion, said canal had and ever since has continued to have a carrying capacity equal to 39.65 second feet of water, and ever since the completion of said canal this defendant and its grantors and predecessors in interest have, during the high water stage of each and every year, diverted from said river through said canal and applied to necessary and beneficial uses the full carrying capacity of said canal, to-wit, 39.65 second feet of water, and have continued to divert said quantity of water from said river during each and every

(except when wrong fully interfered with)
year, [^]so long as the flow in said Provo River, near and below the mouth of Provo Canyon, in Utah County, Utah, was sufficient to fill to their full carrying capacity as now constructed, the canals of the parties defendant in this suit, who take water from said river near or below the mouth of said Provo Canyon; and when the volume of said river near and below the mouth of said Provo Canyon has become reduced in volume to a quantity not sufficient to fill the canals of the defendants in this action taking water from said river near and below the mouth of said Provo Canyon, this defendant has diverted and applied to necessary and beneficial uses .0395 of all the water of said Provo River flowing near the mouth of Provo Canyon until the quantities flowing in said river at the point aforesaid, becomes reduced to a volume not exceeding 15,000 cubic feet per minute; whereupon during each season the defendant has diverted from the waters of said river, .0355 of all the waters of said river flowing near or below the mouth of Provo Canyon and has continued during each year ^{*(except when wrong fully interfered with)*} to divert said quantity until the volume of water flowing in said river at said point is reduced to a volume not exceeding 12,000 cubic feet per minute, whereupon, this defendant has diverted from the waters of said river during each year .0290 of all of the waters of said river flowing near or below the mouth of said Provo Canyon, and has continued ^{*(except when wrong fully interfered with)*} to divert the last mentioned quantity so long as the waters of said river, near or below the point aforesaid, did not exceed 12,00 cubic feet per minute. That all of the water so diverted by this defendant has been diverted under a claim of right, and ownership based on the appropriation and use aforesaid, and has been conveyed and applied in a careful and economical manner and the use thereof has been necessary and beneficial and requisite to the proper irrigation and

maintenance of the farms, orchards, homes and industries owned by this defendant's stockholders and maintained on the lands served by this defendant's canal.

FIFTH.-- This defendant further alleges that its rights to the use of the waters of Provo River and its proportionate share of the flow of said river diverted, appropriated and owned by this defendant, as hereinabove set forth, were acquired prior to the organization of the plaintiff; and the proportionate share of said river appropriated, owned and used by this defendant was and lawfully should continue to be controlled and determined by the flow of water in said river resulting from all the natural sources of supply, as well as from the inflow into said river through seepage, drainage and springs caused by and resulting from the diversion and use in irrigation by defendants in this action of the waters of said river upon lands above the mouth of Provo Canyon and particularly in the South Fork of Provo Canyon and in Wasatch and Summit Counties, That since the organization of the plaintiff in this action and particularly during the past four years, the plaintiff has wrongfully interfered with the flow of the water in said river by wrongfully impounding and storing it, and by wrongfully changing the point of diversion and use of certain of the waters of said river claimed by the plaintiff and under the pretense of having furnished new sources of supply of water for said river at points in Summit and Wasatch Counties, has wrongfully diverted, in Utah County, near the mouth of Provo Canyon, large quantities of the natural flow of said river, to which this defendant, and other defendants in this action were entitled under the pretense of re-capturing the water pretended to have been supplied from new sources. That the said wrongful and unlawful interference with the flow of the

waters of said river by the plaintiff in this action, in addition to depriving this defendant and the other defendants of portions of the waters of said river, to which they were entitled, has also deprived this defendant and others of the means of determining the just and lawful quantities to which it is entitled, and has also caused this defendant and other defendants in Utah County, to suffer great inconvenience and incur heavy and burdensome costs and expenses in connection with the measurement, division and separation of the water claimed to have been transferred from one diversion point to another or turned into said river from new sources of supply by the plaintiff. That the acts of the plaintiff in wrongfully storing and impounding the natural flow of said river, and wrongfully transferring water from one point of diversion to another and the pretended commingling with and re-capturing from the waters of said river of waters wrongfully claimed by the plaintiff have resulted in great and irreparable injury to this defendant. That the plaintiff threatens to continue such wrongful acts and will do so unless restrained therefrom by an order of this Court.

SIXTH.-- That on the 29th day of January, 1902, the District Court of the Fourth Judicial District of the state of Utah, in and for Utah County, in an action pending in said Court numbered 718, wherein Provo City et al. were plaintiffs and the West Union Canal Company et al. were defendants, a decree was duly made and entered under which the rights of the parties in said action in and to the waters of Provo River, as they then flowed at and below the mouth of Provo Canyon, were settled and determined, which decree has never been modified, vacated nor appealed from, and is now a valid and subsisting judgment of said Court.

SEVENTH.-- That on the 26th day of January, 1907, the District Court of the Fourth Judicial District of the state of Utah, in and for Utah County, in a cause therein pending wherein Provo City et al. were plaintiffs and the Telluride Power and Transmission Company et al. were defendants, duly made and entered a decree, which has never been modified, reversed or appealed from, and which is now a valid and subsisting judgment, whereby all of the waters of said river flowing at the mouth of Provo Canyon were divided into two classes designated as class "A", and class "B", respectively. That class "A" water under said decree consists of all the water of said river when the flow thereof has decreased to not more than 17,467 cubic feet per minute of time, measured at the mouth of Provo Canyon, and the several points of intake of the parties in said action taking waters from said river above the mouth of said canyon, and class "B" water under the terms of said decree consists of all the waters of said river in excess of 17,467 cubic feet, measured as aforesaid. That the plaintiff in this action is the grantee and successor in interest of the Blue Cliff Canal Company, a corporation, which Blue Cliff Canal Company was one of the defendants in the action in which the decree last aforesaid was rendered, and the plaintiff in this action asserts, claims and maintains, as the grantee and successor in interest of the said Blue Cliff Canal Company all of the rights in the waters of said river awarded and decreed to the said Blue Cliff Canal Company by the judgment in said action. That the quantity of class "B" water awarded by said decree to the Blue Cliff Canal Company was 960/17,960ths of the waters of said river measured at the point designated in said decree and the plaintiff in this action, as the grantee and successor in interest of the said Blue Cliff

Canal Company is estoppd, by virtue of said decree, from claiming or asserting any claim or right in and to the waters of Provo River measured at the point last aforesaid, in excess of the quantity of water awarded to the said Blue Cliff Canal Company by the terms of said decree.

EIGHTH.-- That the plaintiff and each of the other defendants herein, as this defendant is informed and believes and therefore alleges, asserts and sets up some claim or interest adverse to the ownership, title and rights of this defendants to the use of the waters of said Provo River, as claimed by the defendant herein, the exact nature or character of which claims this defendant is unable to state, and this defendant alleges that each and all of the said adverse claims of the plaintiff and the other defendants in this action are without right or foundation in law and are inferior to the rights of this defendant and the assertion of the same are a cloud upon this defendant's title and ownership in and to the waters of said river, as in this counter-claim and cross complaint set forth.

WHEREFORE, this defendant prays judgment:

That the plaintiff and each of the other defendants in this action be required to set forth each and every interest and claim made by them and each of them in and to the waters of said Provo River adverse to the rights of this defendant as hereinbefore set forth, and that said several adverse claims and interests be adjudicated and determined and declared to be without right or foundation as against the right of this defendant; that the title, ownership and right to the use of the quantity of water from said river claimed by this defendant as herein set forth be quieted and confirmed by a decree of this Court as against the claims

and pretended rights of each and all of the other parties herein, and that the plaintiff and the other defendants herein be enjoined and restrained from, in any manner, interfering with the rights of this defendant in and to the waters of said river, and that this defendant have such other and further relief as may be proper in the premises.

This defendant prays for general relief and for its costs herein expended.

Gaur G Bagley
Attorney for Defendant,

Timpanogos Canal Company

STATE OF UTAH, }
COUNTY OF UTAH. } SS.

David H. Jones, being first duly sworn upon his oath deposes and says; that he is an officer to-wit, president of Timpanogos Canal Company, one of the defendants in the above entitled action; that he has read the foregoing answer, counter-claim and cross complaint, and the statements therein made are true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes them to be true.

David H Jones

Subscribed and sworn to before me
this 12th day of January, 1915.

Gaur G Bagley
Notary Public.

My commission expires:

Aug 6-1918.

Fourth Dist Court
Utah Co Utah

Provo Reservoir Co.
vs.
Provo City et al

Answer Counter
Claim & Cross Complaint
of Timpanogos Canal
Company. Deft

Received a copy of the
within answer Jan 13th 1915
and consent granted file
the same as in title.

Jacob Evans
one of the Attorneys
for the Plaintiff

CLERK OF DISTRICT COURT,
UTAH COUNTY, UTAH.
JAN 1 1915
A. W. Wrayman, Clerk.
W. R. Evans, Deputy.